



**MINUTES OF THE CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, January 17, 2006, 8:00 p.m.**

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**MEETING**

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Dowling.

**ROLL CALL**

Present: COUNCIL MEMBERS Quirk, Jimenez, Halliday, Ward, Dowling, Henson  
MAYOR Cooper  
Absent: COUNCIL MEMBERS None

**PRESENTATION**

Pride in Hayward Award

Mayor Cooper presented the January Pride in Hayward Award to the following Hayward residents from the Mt. Eden Neighborhood: Bogdanos family; Richard and Kim Tsubamoto, Alex Chin and Victoria Santiago; Orlando and Maria Tavares; and Elisabeth Hartman. She thanked each for taking pride in their homes by maintaining their property and adding to the beauty of the City of Hayward. She urged residents to nominate families with well-maintained homes in their neighborhoods.

**PROCLAMATION**

National Volunteer Blood Donor Month

Mayor Cooper read the proclamation declaring the month of January 2006 as Volunteer Blood Donor Month. She urged all residents to pay tribute to those among us who donate for others in need and urged all Hayward residents in good health to donate regularly.

**PUBLIC COMMENTS**

Carolyn Williams spoke regarding the Josephine Lum Lodge residents.

**CONSENT**

1. Approval of the Minutes of the City Council Meeting of January 10, 2006

It was moved by Council Member Henson, seconded by Council Member Jimenez, and carried unanimously to approve the minutes of the City Council Meeting of January 10, 2006. Council Member Ward stated that although he was absent from the meeting, he had read them and will vote on their approval.

**DRAFT**

2. Water Main Retrofit at Hayward Fault Crossings on Walpert Street and Palisade Street - Authorization for Change Order and Appropriation of Funds

Staff report submitted by Deputy Director of Public Works Ameri, dated January 17, 2006, was filed.

It was moved by Council Member Henson, seconded by Council Member Jimenez, and carried unanimously, to adopt the following:

Resolution 06-003, "Resolution Authorizing an Increase in the Administrative Change Order Amount and Amending Resolution 05-080, as Amended, the Budget Resolution for Capital Projects for Fiscal Year 2005-2006, Relating to an Appropriation of Funds for the Water Main Retrofit at Hayward Fault Crossings Project, Project No. 7164"

## **HEARING**

3. Text Change of Alcoholic Beverage Outlet Regulations, Initiated by the Planning Director

Staff report submitted by Project Planner Anderly, dated January 17, 2006, was filed.

Project Planner Anderly presented the report noting that staff is recommending an amendment to the definition of the term "restaurant" to support contemporary marketing styles that work effectively and provide separate bars and is not the primary purpose of the establishment. She cited Olive Garden and Appleby's as examples. The amendment will also include performance and physical standards for the operation of the restaurant. In discussion with police staff, use permits will be required for existing establishments that desire to become entertainment venues more than a restaurant as they would not meet the performance standards in the definition. She reported on the separation requirements of the ordinance and stated that the ordinance continues to maintain the current 100-foot separation of establishments in the downtown. It retains the 500-foot radius separation from schools, parks, library, day care centers and other similar uses. The ordinance will change the 500-foot separation when the alcohol establishment is outside the downtown area. It will not apply to alcohol establishments not on the same side of street. She referred to Crossroads World Market as an example, and noted that the Planning Commission objected this at its hearing. As use permits are required for these establishments there is still opportunity for discretion. She noted that in the last 13 years Council has approved six, and only one had a separation issue.

Project Manager Anderly further discussed the recommendation to adopt a policy related to letters of public convenience or necessities. The recommendation is not to send letters for bars or liquor stores in areas of over concentration. This revised ordinance would authorize the Planning Director to send letters for uses that are already exempt from the alcohol ordinance, such as large grocery stores. She enumerated those receiving notice and responded to questions from Council.

Council Member Jimenez commented on the staff report, commended staff, and emphasized that the Chamber of Commerce was supportive of the changes and amendments to the ordinance as it will benefit the downtown.



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Council Member Halliday was disappointed that an additional work session was not scheduled prior to this public hearing. She felt that further discussion would assist her in what was discussed in 2004. She expressed her desire to maintain the 500-foot separation rule and agreed with the Planning Commission's recommendation to maintain it.

City Manager Armas responded to the question related to Council direction at the 2004 work session, noting that there were three areas for staff resolution: one was the question of volume versus square footage to determine quantities within a particular building; the second to consider not allowing liquor stores and bars in areas of high concentration and third, staff was directed to consult with agencies such as COMPRE to continue the process of revising the ordinance. He noted that there have been few requests to operate such establishments.

Project Planner Anderly suggested that grouping restaurant establishments is favorable in some instances and felt that it is more important to look at the use permit than the separation requirement.

Council Member Halliday discussed the issuance of letters by the Planning Director for future liquor stores and bars, which would be eliminated in the new ordinance. She summarized that with this elimination, such establishments would no longer be approved and strengthen the City's position. It was noted that such establishments have applied and withdrawn due to downtown merchant opposition.

Council Member Ward stated that he understands the desirability to make the downtown more attractive, but was concerned with the separation condition in neighborhoods. There may not be the distance in other neighborhoods. There was discussion on merits of the use permit in particular when there is change in management and would prefer not modifying the separation portion of the ordinance.

Council Member Henson reiterated the need for restaurants in the downtown and agreed with what was stated by his colleagues. He would be supportive of the revisions for the benefit of the downtown, but stated that this is a major concern that convenience stores could destroy the essence of neighborhoods. Council Member Henson discussed with Police Chief Lowe how the Department of Alcoholic Beverage Control (ABC) license goes to the owner of the business, and any changes are reviewed by the Police Department, which grants transfer approvals. It was noted that the use permit on the land remains with the land. Council Member Henson inquired on what other cities in this county deal with this issue.

Project Planner Anderly reported that some of the bigger cities as Oakland, Vallejo and Walnut Creek have had some problems with restaurants with bars, but this has not been a problem in Hayward. The Police Department agrees that regardless of the separation, this ordinance provides a more complete definition for restaurants and provides a policy that addresses those issues.

Council Member Henson asked whether staff reviewed the information as provided by ABC, which may not be accurate. He expressed concern that making revisions may be an issue if the data is

inaccurate. Project Planner Anderly indicated that she received notice of this from the City of Stockton and reviewed Hayward's to determine the number of residents in relation to the number of ABC licenses issued for such establishments in a census tract. The information has about a 30% error rate.

Council Member Quirk felt that it was more beneficial to conduct this hearing that is broadcast rather than in a work session. He agreed with the provision of no longer providing letters to bars and liquor stores. He confirmed that letters of convenience and necessity would no longer be issued by the Planning Director. He asked for clarification of the definition of fast food restaurants. He asked how performance standards would be applied and asked if they could be applied on those establishments that do not have a conditional use permit. Project Planner Anderly explained that gross receipts are reviewed to verify that the establishment is a restaurant.

City Manager Armas stated that staff is not recommending the language as recommended by COMPRE. Although some cities do this, Hayward does not recommend that any liquor establishment be subject to the performance standards as there have not been problems as compared to other communities. The Police Department has worked with ABC to successfully resolve issues with two establishments. Council Member Quirk asked about the nuisance section of the draft ordinance and as he has previously met with COMPRE staff, asked if the "sales to minors" language be placed under the nuisance section.

Council Member Halliday had a follow-up question related to the definition of a restaurant and asked for a clarification in the Planning Commission minutes of December 15, 2005. There was a brief discussion on the definition of a nightclub that differentiates it from a restaurant. Project Planner Anderly stated that this would be a tool to assist the review by both the Planning Commission and the Police Department to require a conditional use permit and is a more stringent standard than ABC's standards.

Mayor Cooper opened the public hearing at 8:55 p.m.

Bill Leung, owner of Golden Mountain Restaurant, spoke in support of the text change.

John Mallory spoke in opposition of the text change. He reported that on occasion, he has observed liquor served to minors. He recommended that performance standards be applied to every establishment of this type. He desired to strengthen the conditional use permit and allow citizens to provide public input.

Mary R. Clements spoke in support in keeping the conditional use permit process intact and allow public input. She reported that she had previously sent an email in this regard.

Maria Solis, a resident of Longwood, spoke in Spanish and was opposed to the 500 foot separation and any over concentration of liquor stores in neighborhoods. She urged that the current laws not be weakened.

Gloria Morales spoke in opposition to the text changes and felt that the community should have a say in approving them. She commented that the Dollar Store near St. Joachim's Church sells wine coolers.



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Twila Flores spoke against the proposed ordinance. She spoke against the over saturation of liquor establishments.

Jennifer Cabrejas spoke against the text change. She was concerned that owners of bars could masquerade as restaurants and asked whether there will be oversight of such establishments.

Raquel Domingo, a member of the Eden Youth Health Advisory Council, spoke on the provisions of the modified text change and noted her concern that the performance standards do not include the prohibition of sales of alcohol to minors. She also felt that the revision could increase the need for police services.

Zachary Twist, representing his business at 631 Jackson Street, the Islamic Institute, spoke on the social concerns of alcohol and expressed his opinion that liquor stores are the nexus of such problems. He spoke strongly against removing public input by allowing the Planning Director to take discretion and commented on his experience on community concerns in Oakland.

David Cota, representing COMPRE, emphasized its opposition to eliminating the conditional use permit process as restaurants with bars tend to be a source of crime and nuisance behaviors. He submitted a survey of information regarding ABC violations. Using a map, he demonstrated the over-concentration of alcohol establishments. He commented on the performance standards and reported that COMPRE pays for such reports from ABC. He responded to questions from Council.

Council Member Dowling asked for clarification on the report. Mr. Cota reported on specific Hayward establishments that have been cited as requested by Council Member Dowling. Mr. Cota reported that in his survey of other cities, most require a conditional use permit.

It was noted that these changes will basically eliminate bars and liquor stores in the practical sense. It was also noted that Council has not approved bars and liquor stores since 1993. Every service station requesting the sale of alcohol has been denied. Police Chief Lowe explained that the ABC grant funded a program related to sales to minors and will no longer be available. He reported that since 2000, 62 reports were sent by ABC and only two were fined.

Council Member Quirk was of the opinion that COMPRE did not thoroughly review this issue, provided misinformation, including its inappropriateness of designating establishments as having history when they, in fact, had only one violation. Council Member Jimenez also agreed that the information distributed by COMPRE was inaccurate.

There was further discussion on the ABC determination of the number of liquor licenses proportionate to the City's population and the issuance of a license for off-sale beer and wine regardless of those limits.

Liz Morales, Prevention Specialist at COMPRE, clarified how information was collected and analyzed. She noted that the definition for liquor does not include beer and wine which are sold in convenience stores, thus in her information there is an over saturation. She asked that the Council continue in conducting the conditional use permit process including stores over 10,000 square feet. She felt that Hayward residents should have the opportunity to provide input. She stated that COMPRE is requesting that minimum performance standards be applied to all of its ABC licenses, not just the new establishments. She asked that language related to the sale to minors be added to the performance standards. Thirdly, she recommended that there be a cost recovery fee for enforcement and education for each of the alcohol establishments.

Carlos España, a Hayward resident, spoke against the proposed text changes, in particular eliminating the permit process and public input.

Zaid Shakir, representing the Islamic Institute, described various public nuisances on Jackson due to alcohol.

Margarita Calvio, a resident of the Longwood neighborhood, spoke against the proposed changes.

Mayor Cooper closed the public hearing at 9:54 p.m.

Mayor Cooper commented on the Council's public hearing notification process. She explained the Council's land use authority over restaurants. She stated that this Council is not abolishing the sale of alcohol nor supporting alcoholism. She noted that this Council has limited power over alcohol sales. The Alcohol Beverage Control Board has most of the power and the City works with them to close down violators. Mayor Cooper cautioned against closing down alcohol outlets as a solution to eliminating youth usage of alcohol and drugs. Concentrating on the sale of alcohol is not addressing youth problems. She commended Jolene and John Mallory for their outstanding dedication to youth. She would be supporting the revision.

Council Member Ward felt that he could approve some parts of the proposed ordinance that supports the downtown, but he did not agree with the separation issue as it exacerbates an already serious problem in neighborhoods. He cautioned against the notion that no future liquor establishments will be allowed in Hayward. Lastly, he stated that he could not support the staff recommendation due to the separation issue.

Council Member Quirk discussed his experience with alcohol and its availability. He stated that Council approving an additional alcohol establishment in the future is unlikely, but could occur with well-justified reasons. He felt that the revisions would strengthen existing regulations. He asked staff to provide language for the change that the 500 foot radius rule does not apply when there is a divider or median on the street. He agreed that restaurants with a separate bar are not a problem for Hayward. This would encourage sit-down restaurants; and this is not a revenue issue, but to have more nice restaurants. He moved the recommendation with the change that the 500-foot radius requirement outside the downtown apply to establishments on the same side of the street remain. Council Member Jimenez seconded the motion.

It was noted that this was the Planning Commission recommendation.



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Council Member Dowling asked about refining the definition as suggested by COMPRE to add “beer and wine” to the definition. He was in support of the downtown restaurants. And asked both the maker of the motion, Council Member Quirk, and the maker of the second, Council Member Jimenez, to add the suggestion and eliminate the 500-foot radius separation from the motion. They accepted the revisions to the motion.

Council Member Halliday felt that Council Member Dowling’s additional recommendations to the motion were noteworthy. She asked that the “sale to minors” be added to the language in the performance standards as reinforcement to the establishment that the City is serious about this issue. Both the maker of the motion, Council Member Quirk and the maker of the second, Council Member Jimenez, accepted this minor change. Council Member Halliday indicated that she would be voting against the ordinance as she believed in retaining the condition to require a conditional use permit for restaurants with bars.

Council Member Ward will be supporting the modified motion. There was clarification regarding the administrative determination by the Planning Director that can be appealed to the Planning Commission and to the Council. A conditional use permit cannot be approved by staff.

Council Member Henson reiterated his vision for the future. He remained firm on his decision to support the downtown, and suggested that this could apply to the mall as well. He felt that there was some vagueness to the ordinance. He would not be supporting the motion and would prefer instead a rewrite of the ordinance.

It was moved by Council Member Quirk, seconded by Council Member Jimenez, and carried by the following roll call to adopt the staff recommendation with no changes to the existing ordinance relating to the 500 foot separation requirement; add “beer and wine” to the definition section of liquor stores; add the language to the performance standards related to prohibiting the sale of alcohol to minors, and approve the following:

Introduce Ordinance 06-\_\_, “Ordinance Amending Section 10-1.2735(b) of the Hayward Municipal Code and Adopting New Alcoholic Beverage Outlet Regulations”

Resolution 06-004, “Resolution Approving the Negative Declaration and Adopting Text Change Application No. PL 2005-0623, Relating to Alcoholic Beverage Outlet Regulations”

Resolution 06-005, “Resolution Regarding Letters of Public Convenience and Necessity to the California Department of Alcoholic Beverage Control”

AYES: COUNCIL MEMBERS Jimenez, Quirk, Ward,  
Dowling  
MAYOR Cooper  
NOES: COUNCIL MEMBER Halliday, Henson  
ABSENT: None  
ABSTAINED: None

## LEGISLATIVE BUSINESS

4. Vesting Tentative Tract Map 7487/PL-2003-0515 – Application No. PL-2005-0705 – Request for One-Year Extension of Tract Map for Centennial Tower – Property Located at 22300 Foothill – The Albert Group (Applicant), Intercoastal Group of Properties (Owner)

Staff report submitted by Associate Planner Pearson, dated January 17, 2006, was filed

Project Planner Anderly made the report, noting that two years ago a vesting tentative map was approved and are requesting a one-year extension for the tentative map.

Robert Sakai, attorney for the project, recalled the former City Hall occupancy and now it has been an eyesore since its closure by the City. As a standalone project it is not financially viable. He reasoned that the extension of the map would allow further discussions by the owner with staff, adding that currently it is not financially viable to improve the building. The owner has assured that within a particular time period, it will either be renovated or removed completely. He introduced the project manager. Mr. Sakai responded to Council questions and suggestions to remove the edifice and construct a new building. He indicated that adding new units to the project could make the project viable and conversations are occurring to perhaps improve the garage to support additional units. It was noted that when discussions are affirmed, Council will consider any contractual proposals.

With no requests to speak, Mayor Cooper opened and closed the public hearing at 10:32 p.m.

It was moved by Council Member Henson, seconded by Council Member Halliday, and unanimously carried to adopt the following:

Resolution 06-006, “Resolution Approving an Extension of Tentative Map Tract 7487 PL-2003-0515 for Centennial Towers, the Albert Group, Inc. (Applicant) and Intercoastal Group of Properties, Inc. (Owner)”

## COUNCIL REPORTS

There were no Council reports.

## ADJOURNMENT

## DRAFT





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Mayor Cooper adjourned the meeting at 10:33 p.m.

**APPROVED:**

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Roberta Cooper, Mayor, City of Hayward

**ATTEST:**

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Angelina Reyes, City Clerk, City of Hayward